IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2000 OF 2006

1.Smt.Suvarna Appa Dhaygude
2.Dinkar Balku Dhaygude
3.Smt.Indubai Dinkar Dhaygude
4.Miss Shilpa Appa Dhaygude
5.Miss Vidya Appa Dhaygude
6.Master Nilesh Appa Dhaygude ...Appellants

vs.

The Union of India ...Respondent

Mr.G.J.Mohanrao for the Appellants
Mr.Anand Samant for Respondent.

CORAM: A.S.OKA,J.
DATE : JANUARY 18,2007.

ORAL JUDGMENT:

1. Notice for final disposal has already been issued. Heard the learned Advocate for the Appellants and the learned Advocate for the Respondent. The challenge in this Appeal is to the Judgment and order dated 15th November 2002 passed by the learned Member of the Railway Claims Tribunal, Mumbai. An Application was made by the present Appellants invoking provisions of section 124-A of the Railways Act, 1989 by contending that one Appa Dinkar Dhaygude while travelling by a local train from Thane to Kalyan fell down from the train at Diva and as a result, he received brain injury and he died as a result of the said injury. The finding of the Tribunal is that the deceased was found in possession of two railway tickets dated 7th January 1999 and there was some material on record to show that the accident occurred on 8th January 1999.

The finding is that the deceased was not a bonafide passenger.

2. The learned Advocate for the Appellants submitted that the finding of the tribunal that the accident occurred on 8th January 1999 is based only on the fact that the dead body of the deceased was recovered on 8th January 1999. He invited my attention to the evidence of the widow of the deceased which according to him shows that on 7th January 1999 the deceased attended his duty in his office at Thane and while he was returning home, the accident took place. He submitted that a ticket purchased on 7th January 1999 was found with the dead body which was purchased between 14.00 hours to 19.00 hours. He, therefore, submitted that the Appellants had established that the deceased was a bonafide passenger who was the victim of an untoward incident under section 123 (c) of the said Act of 1989. The learned Advocate for the Respondent supported the impugned Judgment and Order.

3. I have perused the documents placed on record in the paperbook filed by the Appellants. I find that in the claim application the date of the incident is not mentioned. It is true that the widow has deposed that though 7th January 1999 was a holiday, still the deceased had attended the office at Thane. I find that no one has been examined by the Appellants to show that on 7th January 1999 deceased had attended the office at Thane and that is the reason why he purchased the

ticket at Thane on 7th January 1999 for his return journey. Faced with this difficulty, the learned Advocate for the Appellants submitted that considering the fact that the case is of death, an opportunity may be made available to the Appellants to lead further evidence by passing an order of remand.

4. Considering the facts and circumstances of the case, the prayer made by the learned Advocate for the Appellants is reasonable.

5. Hence, I pass the following order :

i) Impugned Judgment and Order dated 15th November 2002 is quashed and set aside. The claim application bearing Original Application No.9900093 is restored to file.

ii) Parties are directed to appear before the Railways Claims Tribunal, Mumbai on 12th March 2007 at 11.00 a.m.

iii) The Railway Claims Tribunal, Mumbai will permit both the parties to lead additional evidence. After considering the additional evidence led by both the parties and the evidence which is already on record, the Tribunal will decide the application afresh in

accordance with law. This exercise will be completed as expeditiously as possible and preferably on or before 30th June 2007.

iv) Appeal is partly allowed in above terms.

v) All contentions of the parties on merits are kept open.

vi) The Tribunal and the parties to act upon an authenticated copy of this order.

JUDGE